Arpro Company M/V Arctic Producer *and* International Longshoremen's and Warehousemen's Union, Alaska Council

Arpro Company M/V Arctic Producer *and* International Longshoremen's and Warehousemen's Union, Local 3, Petitioner. Cases 19-CA-12945, 19-CA-13454, and 19-RC-9987

November 3, 1982

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On September 15, 1981, Administrative Law Judge Earldean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a cross-exception and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt her recommended Order,[1] as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Arpro Company M/V Arctic Producer, Seattle, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Denying nonemployee organizers of the Union reasonable access to its ship *Arctic Producer* for the purpose of soliciting employees on behalf of said Union, and for the purpose of otherwise communicating with said employees concerning organizational matters; provided, however, that nothing herein contained shall be construed to prohibit Respondent from making and enforcing reasonable regulations with respect to visits to its vessels by such nonemployee union representatives."

2. Substitute the following for paragraph 1(f):

"(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act."

3. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the election conducted on March 27, 1981, in Case 19-RC-9987 be, and it hereby is, set aside and said case is hereby remanded to the Regional Director for Region 19 for the purpose of conducting a second election.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties were represented by their attorneys and presented evidence in support of their respective positions the National Labor Relations Board has found that we have violated the National Labor Relations Act, as amended, in certain respects, and we have been ordered to post this notice and to carry out its terms.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT deny nonemployee organizers of International Longshoremen's and Warehousemen's Union reasonable access to our ship *Arctic Producer* for the purpose of soliciting employees on behalf of said Union, or for the purpose of otherwise communicating with said employees concerning organizational matters; provided, however, that nothing herein contained shall be construed to prohibit us from making and enforcing reasonable regula-

[1] The General Counsel excepts to the Administrative Law Judge's failure to specifically recommend that Respondent cease and desist from prohibiting union organizers from staying overnight on the ship and prohibiting their freedom of circulation within the living and recreational areas of the ship. In order to preserve the parties' freedom to design reasonable access rules which take into account many variables including the weather, airplane availability, and the number of employees on board and working at any given time, we overrule the General Counsel's cross-exception

[2] See *Belcher Towing Company*, 238 NLRB 446 (1978).

tions with respect to visits to our vessels by such nonemployee union representatives.

WE WILL NOT promulgate and maintain a rule as to distribution of union literature which requires the prior permission of management and which sets forth no qualification as to the time and location of the prohibition of such distribution.

WE WILL NOT grant employees wage increases in order to induce them to withhold their support from the above-named Union.

WE WILL NOT institute a disciplinary warning procedure or other change in the terms and conditions of employment of our employees during the course of a union organizational campaign in order to influence the outcome of a representation election.

WE WILL NOT tell employees that we will deny nonemployee organizers for the above-named Union the right of reasonable access to employees living on our ship *Arctic Producer* for purposes of soliciting their support for said Union or impliedly threaten such organizers would be subject to arrest if they attempted to board said ship.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

ARPRO COMPANY M/V ARCTIC PRODUCER

DECISION

STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge: This matter was heard before me in Anchorage, Alaska, on July 23, 1981. The charges in Cases 19-CA-12945 and 19-CA-12965 were filed by the International Longshoremen's and Warehousemen's Union, Alaska Council, herein called the Council or the Union, and served on Arpro Company, M/V Arctic Producer, herein called Respondent, on November 10 and 17, 1980, respectively. The consolidated complaint in Cases 19-CA-12945 and 19-CA-12965 issued on December 24, 1980, alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act. The charge in Case 19-CA-13454 was filed by the Union and served on Respondent on April 13, 1981. The amended consolidated complaint in Cases 19-CA-12945, 19-CA-12965, and 19-CA-13454 issued on May 28, 1981, alleging that Respondent violated Section 8(a)(1) and (3) of the Act.

The petition in Case 19-RC-9987 was filed by International Longshoremen's and Warehousemen's Union, Local 3, herein called Petitioner or the Union,[1] on October 22, 1980. Pursuant to a Decision and Direction of Election issued by the Regional Director on December 5, 1980, an election by secret ballot was conducted on March 27, 1981, which resulted in 1 ballot for and 25 against the Petitioner. On April 8, 1981, the Petitioner timely filed election objections. On May 28, 1981, the Acting Regional Director determined that certain of said objections raised matters similar to that alleged as unfair labor practices in Cases 19-CA-12945, 19-CA-12965, and 19-CA-13454 and ordered that Case 19-RC-9987 be consolidated with said cases for purposes of hearing, ruling, and recommended decision. Thereafter the parties adjusted the matters raised by the charge in Case 19-CA-12965 and, on June 29, 1981, the Charging Party filed a request for withdrawal of said charge. On July 1, 1981, the Acting Regional Director approved said request and ordered that Case 19-CA-12965 be severed from Cases 19-CA-12945, 19-CA-13454, and 19-RC-9987 and that the complaint be dismissed as to Case 19-CA-12965. The basic issue herein is whether Respondent unlawfully denied the Union reasonable access to Respondent's employees on the *Arctic Producer*, and unlawfully granted its employees a wage increase and changed their conditions of employment in certain other respects.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent, a partnership engaged in seafood processing, has maintained an office and place of business in Seattle, Washington, and has utilized the factory ship M/V *Arctic Producer* to process seafood in Alaskan waters. During the 12-month period preceding the issuance of the complaint herein, which period is representative of all times material herein, Respondent, in the course of its business operations, had gross sales of goods and services valued in excess of $500,000; and sold the shipped goods or provided services valued in excess of $50,000 from its facilities within the State of Alaska to customers outside the said State, or to customers within said State, which customers were themselves engaged in interstate commerce by other than indirect means.

The complaint alleges, Respondent admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

[1] It is clear that the Council's activity herein was on behalf of the Petitioner and they are referred to collectively as the Union.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The facts herein are mostly undisputed. Respondent acquired the *Arctic Producer*, herein called the ship, in August 1980.[2] The ship left Seattle about September 1 and sailed to Beaver Inlet which is located about 20 minutes by air, across a mountain range, from Dutch Harbor, a community in the Aleutian Islands. Approximately half of the required crew was hired in Seattle, Washington, and traveled by plane to the ship. The remainder of the crew was hired in Dutch Harbor. All members of the crew signed employment agreements with Respondent which set forth the wage rate and certain agreed-upon terms of employment. The duration of the employment agreement, by its terms, was for the length of the king crab season or December 21, whichever came first.[3]

During the period of employment, the crew lived on the ship on a 24-hour-a-day, 7-day-a-week basis. Once employees board the ship, they remain there unless they leave because of illness, injury, or termination of employment. Their only communication with the world outside the ship, other than the mail, is by the ship's radio which can used to place outside telephone calls. The nearby mountain range prohibits reception of commercial television and radio programing and all television programing shown aboard ship is by video cassette. During production, the ship is anchored a few hundred yards from the, apparently uninhabited, beach. The usual method of reaching the ship from Dutch Harbor is by amphibious airplane. The plane disembarks passengers on the beach who are then picked up by a skiff sent from the ship.

The ship began processing operations about September 17. Basically, this involved buying live king crab from fishermen and then butchering, cooking, freezing, and boxing it for sale. During the fall king crab season, production employees work an average of 14–16 hours daily. During the tanner crab season which is from January through approximately May, the crew works an average of 12 hours daily.

During the first part of October, employee Brad Starkey was sent to Dutch Harbor due to an injury. While there, he discussed organizing the production crew on the ship with union representative Paul Fuhs. When Starkey returned to the ship, he distributed union authorization cards to fellow employees and returned the signed cards to the Union. On October 15, Larry Cotter, president of the Council, sent Respondent a telegram requesting access to the production employees on the ship. On October 16, Cotter repeated his request during a telephone conversation with Francis Miller, a representative of Respondent. Miller said that would be no problem. They discussed the possibility of a consent election and Miller suggested that Cotter telephone him the following week. Following Cotter's unsuccessful attempts to reach Miller the following week, the Union filed the petition in Case 19-RC-9987 on October 22.

According to the undenied testimony of Starkey, sometime in October Ron Morrison, ship superintendent, held a meeting of employees. During this meeting, Morrison said he thought the crew was going to strike or quit. He asked them to remain until the end of the season and said that anyone who stayed through next season would receive a 50-percent raise. Morrison further stated that union representative Paul Fuhs had attempted to come on board but that he could not come on board the ship unless he was accompanied by a Federal marshall. He also said that Fuhs had been arrested on some past occasion for attempting to board another vessel.

Fuhs testified, without contradiction, that on November 4 he went to the office of Airpack, a charter airline, to make arrangements to be flown to the beach near the ship on November 5. The clerk at Airpack contacted the ship by radio and talked to Leone Johnson on the ship.[4] According to Fuh's undenied testimony, the clerk said, "I've got Paul Fuhs here and he wants to come out to the vessel tomorrow to hold a union meeting and I want to clear it with you to make sure that you're expecting him." Johnson replied, "You can fly him over here, but he's not coming on board the vessel. If you come, you'll just be leaving him on the beach, and we're not going to go in and pick him up, so you might as well not fly him over." At that point, Fuhs abandoned his plans to visit the ship on November 5.

On October 20, the final day of the Bering Sea season, Respondent laid off approximately 40 percent of its 60-person crew, and gave pay raises ranging from 25 to 50 cents an hour to about 20 percent of those who continued working on the vessel. Terry Baker, Respondent's business manager, testified that this was done to encourage the crew to stay with the ship. According to him, despite the fact that an employee who voluntarily leaves Respondent's employ during the term of the employment agreement is required to reimburse Respondent for the approximately $1,000 in round-trip transportation cost from Seattle, employees are tempted to leave because of the long arduous hours, the isolation, the unpleasant weather (constant rain, 100 miles an hour wind), and seeing many of the laid-off employees leave for home.

Of further concern are the number of employees who might consider leaving to work on another vessel. Baker testified that since the work is highly competitive because the length of the season is determined by the overall poundage caught and brought to all the processing ships, it is impossible to calculate the cost of not having a person on the production line to handle as many crabs as possible. Thus the wage increase was a means of ensuring top productions. Baker further testified that some employees in all classifications received a pay raise. The superintendent made the determination as to who would receive an increase based on work performance during

[2] All dates herein in August through December are in 1980 and those in January through March are in 1981.

[3] There are two crab seasons during the fall. The main season, referred to as the Bering Sea season which commences on or about September 12 and a smaller season known as the Dutch Harbor season which commences on or about November 1. The seasons end when the total pounds of crabs caught reaches a prescribed number. In 1980 the Bering Sea season ended on October 20.

[4] The record is unclear as to Johnson's position on the ship at this time, or as to whether Fuhs mistakenly referred to Morrison as Johnson. Johnson later replaced Morrison as superintendent.

the last season. Baker admits that there is no practice in the industry of granting raises between seasons. Fuhs testified that the industry practice is to grant a wage increase after 3 months of employment and sometimes after 7 months of employment.

The ship returned to Seattle on approximately December 1 and Morrison was terminated upon arrival. In mid-February the ship returned to Beaver Inlet with Leone Johnson as superintendent. The employees hired at this time were required to sign an employee agreement different from that used by Respondent previously. The previous agreement sets forth 10 grounds for discharge or discipline. The new agreement sets forth "General Rules of Conduct" which are generally inclusive of the old grounds for discharge or discipline and also contains some additional grounds for discipline as well as a disciplinary warning system. However there is insufficient evidence in the record to establish whether most of them actually consitituted changes in the terms and conditions of employment. The record does establish two changes which are set forth in the rules of conduct—the establishment of a disciplinary warning system and the promulgation of a no-distribution rule which prohibits distribution of literature as follows:

CATEGORY III:

PENALTY: *First Offense* —Written warning
Second Offense —Written warning
and suspension for 3 work days.
Third Offense —Discharge.

* * * * *

6. *Literature Distribution*: Distributing written or printed literature or any description on company property without permission from the Ship Superintendent.

Following a decision and direction of election dated December 5, an election by secret ballot was scheduled for March 26. On March 9, Cotter discussed granting the Union access to the ship with Patrick Donnelly, Respondent's attorney. Donnelly told Cotter that he should work out the provisions for access with Baker. On March 12 Cotter discussed the matter with Baker and requested permission to remain on the ship overnight and to meet with employees in nonworking areas during nonworking time. Baker said that Cotter could not remain overnight. Rather he would be allowed access for a 3-hour period, that he would be restricted to a meeting room, and that Respondent would not cease production to accommodate Cotter's visit.

Cotter protested that this did not constitute reasonable access, that, if the employees worked a 12-hour day, they would either have to cease production to accommodate the access or he would have to remain overnight to meet with employees after production terminated for the day. Baker again said Cotter could not remain overnight nor would Respondent cease production. Cotter asked what would happen if there was a storm while he was on the ship which would prevent his return to Dutch Harbor, would he be locked in a room. Baker said then Cotter would be confined to a room. Baker said Cotter could visit the ship the following day.

On March 13, Cotter attempted to charter a plane from Airpack but nothing was available until 4 or 5 p.m. Inasmuch as the Airpack planes cannot fly at night because of lack of navigation equipment, such a departure hour would permit only a few minutes on the ship before it would be necessary to make the return trip. Therefore, Cotter did not go to the vessel that day. On March 16, Cotter contacted Baker and requested another date. On March 17 Baker notified Cotter that he could visit the ship on March 18.

On March 18, Cotter did visit the vessel. Johnson showed him to the television room, which is approximately 15 by 20 feet, and instructed him that this was where he was to remain. Johnson said he would notify the employees that Cotter was on the vessel and that, if an employee wished to talk to Cotter, he would have to clock out. Cotter remained on the vessel for 2-1/2 hours.[5] During that time he spoke to Starkey and three other employees. One was an employee who had been injured and came to the TV room to recuperate. Another was an employee Baker stopped as the employee walked by the door of the TV room. One employee actually clocked out and came to talk to Cotter.

On March 19, Cotter again requested that Baker permit him to visit the ship overnight. Baker again refused, however they arranged that Cotter could visit the ship on March 22, which he did. When he arrived, Johnson again escorted him to the TV room. Johnson said he had notified the employees of Cotter's presence and that employees would not have to clock out in order to talk to Cotter. No production was in progress when Cotter arrived but it did resume after he had been there for about 45 minutes.

On March 23, Cotter telephoned Baker and told him that the access provisions were totally inadequate, that he had been unable to have a reasonable opportunity to communicate with employees. Cotter said he was preparing to withdraw the Union's request to proceed with the election. However, he suggested that he would be agreeable to delaying the election for 1 week if Baker would agree to the delay and to allow Cotter to make an overnight visit to the vessel to meet with employees in nonworking areas. Baker said that was unacceptable and Cotter could do whatever he wished as to a motion to proceed.

B. *Conclusion*

The basic principle governing the right of nonemployee union representatives to enter on an employer's premises for the purpose of discussing the union with employees is set forth in *N.L.R.B.* v. *Babcock & Wilcox Company*, 351 U.S. 105, 290 (1956). There the Court concluded:

[5] He left early because the plane returned early.

> Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other. The employer may not affirmatively interfere with organization; the union may not always insist that the employer aid organization. But when the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize.
>
> The determination of the proper adjustments rests with the Board.
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> * * * * *
>
> . . . The right of self-organization depends in some measure on the ability of employees to learn the advantages of self-organization from others. Consequently, if the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property.

Thus the Board is required to balance a union's necessity for direct access to employees against the employer's right of control over its property and any detriment which might result from the granting of such access. *N.L.R.B.* v. *S. & H. Grossinger's Inc.*, 372 F.2d 26, 29 (2d Cir. 1967). In accord with these concepts, the Board had established a rule that, absent legitimate business considerations, employers who house employees within their permises may not deny union representatives direct personal access to its premises for the purpose of discussing unionization with employees unless other adequate channels of communications with the employees are available. *The Interlake Steamship Co.*, 174 NLRB 308 (1969); *Sioux City and New Orleans Barge Lines*, 193 NLRB 382 (1971); *Alaska Barite Company*, 197 NLRB 1023 (1972).

Here there are clearly no other adequate channels of communication and Respondent does not dispute the Union's right of access to the ship. Rather the question is, did Respondent's restriction of the union representative to the TV room for 3-hour visits constitute reasonable access. I agree with the General Counsel's position that it does not. In *Interlake Steamship Co., supra*, where the employees received brief shore leave and thus were not as severely isolated as the employees herein, the Board found:

> We also find that because the employees, during the critical period, spent virtually all of their time on board the Employer's vessels, they were, as stated in *Babcock & Wilcox*, placed "beyond the reach of reasonable union efforts to communicate with them" and the Employer was therefore required to honor the Intervenor's request for reasonable means of access to the employees aboard ship at times when the vessels were at major Great Lakes ports. The fact that the Intervenor was able to reach the employees aboard the vessels by mail, that it might have tried by "catch-as-catch-can" methods to solicit some of them while they were on brief shore leave, or that employees while on shore leave might voluntarily have visited the Intervenor's meeting halls, are not, in the circumstances of this case, adequate alternative means of communication. Here, the means of direct and personal solicitation were severly limited and, *in our opinion, an organizational campaign could not be carried on effectively without the seeking out of employees on board their vessels and their solicitation to membership by direct contact by experienced organizers.* Nor has the Employer attempted to show that substantial detriment to its shipping operations would result from elimination of its "no-access" rule to accommodate the rights of its employees to learn the advantages of self-organization. [Emphasis supplied.]

Here, the union representative had no opportunity to seek out employees. Rather employees were required to leave their work stations, during the course of production, and to, themselves, initiate any contract with the union representative, presumably requiring the knowledge and the specific acquiescence of the supervisor. Many employees would be reluctant to initiate any such contact. I find that the restricted access granted the Union did not afford the optimal opportunity for free discussion and solicitation by the union representative such as would be possible in the employees' living and recreational quarters at the end of the workday. In the circumstances herein, this opportunity could reasonably only be afforded by an overnight visit as requested by the Union.

Respondent has not shown that any substantial detriment to, or interference with, its operation would ensue if it granted such access. Accordingly, I find that by refusing to permit a representative of the union access to the ship overnight and the freedom of circulation within the living and recreational areas of the ship, Respondent has denied the Union reasonable access to employees for the purpose of soliciting their membership in the Union and their votes in connection with a scheduled representation election in violation of Section 8(a)(1) of the Act.

The Act also requires an accommodation between the employees' right of self-organization and the Employer's property rights and right to maintain discipline with respect to the distribution of union literature. *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793. Thus a rule prohibiting distribution of union literature on nonworking time in nonworking areas is presumptively invalid. *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962); *Clougherty Packing Company*, 240 NLRB 932 (1979). Here the prohibition of Respondent's rule is unqualified. Thus its overly broad language encompasses the employee distribution of union literature in nonworking areas on nonworking time. Respondent has adduced no evidence to rebut this presumption of invalidity. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act

by promulgating and maintaining a rule prohibiting the distribution of union literature by employees on nonworking time in nonworking areas of the ship without prior permission from the ship superintendent. *Automated Products, Inc.*, 242 NLRB 424 (1979).

As to the wage increases, Respondent argues that it was motivated solely by business considerations—to prevent members of the crew from quitting Respondent's employ. In support thereof, Respondent adduced evidence as to the fierce competitiveness during the fall crab seasons. However, no evidence was adduced that Respondent had any specific indication that any of its employees were contemplating leaving the ship and, when Morrison promised the employees a wage increase, he prefaced the promise by saying he thought the crew was going to strike or quit and made it in the context of statements regarding the attempt of a union representative to visit the ship.

Further, I note that, despite the competition, no practice had evolved in the industry of utilizing wage increases to discourage employee defections. This leads me to believe that the risk was not as great as Respondent would urge. As to the expense of transportation for replacement employees, by the terms of the employment agreement, that cost is ultimately borne by the prematurely terminating an employee who is required to reimburse Respondent for the cost of his transportation. Accordingly, I find Respondent's contention as to legitimate business justifications to be unpersuasive.

In view of the timing, the statements by Morrision, and the absence of any industry practice of granting wage increases to employees between seasons, I conclude that the wage increases granted on October 20 were designed to induce the employees to withhold their support from the Union. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

I also find that Respondent violated Section 8(a)(1) of the Act by instituting a disciplinary warning procedure during the course of the Union's organizational campaign. The only reason offered for the timing of the change was that Respondent had not taken the time earlier to draft rules specifically for employees on the ship. However, the rules, including the disciplinary warning procedures, are of a type commonly used in many industries and do not seem to be specifically tailored to fit work aboard a ship. Thus there seems to be no compelling business reason for instituting the change during the course of a union organizational campaign, and following a decision and direction of election. In these circumstances, I conclude that the institution of the disciplinary warning procedure was calculated to influence the outcome of the election.

I further find that Respondent has interfered with its employees' rights under Section 7 of the Act by Morrison's statement to employees that Fuhs had attempted to board the ship but that he could not come on board unless he was accompanied by a Federal marshall; and that Fuhs had been arrested, in the past, for attempting to board another vessel. In effect, this was notifying employees that the Union would be denied reasonable access to employees living on the ship and that a union organizer might be subject to arrest if he attempted to board the ship. Finally, I find that the evidence does not establish that Respondent instituted a grievance procedure in violation of the Act.

IV. THE OBJECTION

As set forth above, the Union filed timely objections to the election. These objections are as follows:

> 1. The Employer denied the Union reasonable access to its employees.
> 2. The Employer unilaterally altered the terms and conditions of employment for bargaining unit employees following the filing of the representative [sic] petition.
> 4. The Employer maintained unlawful rules and engaged in unlawful activity relating to the distribution of literature on Company property.
> 5. The Union did not receive the *Excelsior* list until two days prior to the scheduled election date.

The critical period is from October 22, the date the petition was filed, to March 27, the date of the election. *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961).

Objections 1, 2, and 4 are based on the same conduct which I have heretofore found to be unfair labor practices. However, certain of the changes in terms and conditions of employment—specifically the wage increase—occurred outside the critical period and objections based on such conduct cannot be sustained. The institution of the disciplinary warning system and the establishment of the unlawful no-distribution rule occurred within the critical period and, accordingly, I shall recommend that Objections 2 and 4 be sustained. I further find that the denial of reasonable access to the employees by the Union's representatives interfered with the exercise of free and untrammeled choice in the March 27 election. Accordingly, I shall recommend that Objection 1 be sustained.

As to Objection 5, following the December 5 decision and direction of election, the Acting Regional Director notified the parties, by letter dated March 13, that an election by secret ballot would be held on March 26 and that the eligibility list must be received in the Board's Resident Office in Anchorage on or before March 16. Respondent submitted a list on March 16 which contained names of employees, but no addresses. The list was forwarded to the Union by the Resident Officer on March 16. However, it was not received by the Union until the afternoon of March 24. I find that the Union was prejudiced by this delay. Accordingly, I shall recommend that Objection 5 be sustained.[6] *American Laundry Machinery Division, a McGraw Edison Company*, 234 NLRB 630.

[6] In view of this finding, it is not necessary to reach the question raised by the Union as to whether the list submitted by Respondent complies with the *Excelsior* rule since it lists only names with no addresses. Essentially the issue raised is whether the *Excelsior* rule requires an employer to list the home addresses of employees, where the employees' current, but temporary, addresses are, the employees' place of business where they are housed.

I have found above that certain conduct described in Objections 1, 2, and 4 constitute unfair labor practices which occurred within the critical period. I further find that such conduct as well as the late receipt of the *Excelsior* list interfered with the exercise of free and untrammeled choice in the election held on March 27, 1981. Accordingly, I recommend that said election be set aside and that a new election be conducted at a time and place to be determined by the Regional Director.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act by denying nonemployee organizers of the Union reasonable access to its ship *Arctic Producer* for the purpose of soliciting employees on behalf of said Union, and for the purpose of otherwise communicating with said employees concerning organizational matters; promulgating and maintaining a rule as to distribution of union literature which requires the prior permission of management and which contains no qualification as to time and location of the prohibition of such distribution; granting employees wage increases in order to induce them to withhold their support from the Union; instituting a disciplinary warning procedure; and by telling employees in effect that it would deny nonemployee organizers for the Union the right of reasonable access to employees living on the ship for purposes of soliciting their support for the Union and intimating that such organizers would be subject to arrest if they attempted to board the ship.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. As alleged in Objections 1, 2, 4, and 5, the delayed receipt of the *Excelsior* list by the Union and the aforesaid conduct of Respondent, which has been found to constitute unfair labor practices within the critical period, have interfered with the employees' exercising a free and untrammeled choice in the representation election held in Case 19-RC-9987 on March 27, 1981.

6. The evidence does not establish that Respondent has engaged in any unfair labor practices except as set forth above.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

ORDER[7]

The Respondent, Arpro Company M/V Arctic Producer, Seattle, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Denying nonemployee organizers of the Union reasonable access to its ship *Arctic Producer* for the purpose of soliciting employees on behalf of said Union, and for the purpose of otherwise communicating with said employees concerning organizational matters.

(b) Promulgating and maintaining a rule as to distribution of union literature which requires the prior permission of management and which sets forth no qualification as to time and location of the prohibition of such distribution.

(c) Granting employees wage increases in order to induce them to withhold their support from the Union.

(d) Instituting a disciplinary warning procedure, or other change in the terms and conditions of employment of its employees, during the course of a union organizational campaign in order to influence the outcome of a representation election.

(e) Telling employees that it would deny nonemployee organizers for the Union the right of reasonable access to employees living on the ship for purpose of soliciting their support for the Union and impliedly threatening that such organizers would be subject to arrest if they attempted to board the ship.

(f) In any related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its place of business on the ship *Arctic Producer*, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[7] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS ALSO RECOMMENDED that Petitioner's Objections 1, 2, 4, and 5 be sustained and that the election held on March 27, 1981, be set aside and a second election by secret ballot be conducted among the employees in the appropriate unit at such time and manner as the Regional Director deems appropriate.